IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16385 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI BABUBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16385 of 2003

M/S THAKKAR ASSOC. for Petitioner No. 1

MS PB SHETH AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 24/10/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that two prohibition offences were registered against him before Valsad Prohibition Station at C.R.No.349 / 2003 and 434 / 2003 respectively on 13/08/03 and 25/09/03 respectively. It was also alleged against him that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid two registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended that the detaining authority had considered two earlier detention orders, copies of which were not supplied to the petitioner. That, therefore, the order of detention is illegal and it may be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

5. At final hearing, the learned advocate for the petitioner has drawn my attention to page 17 of the grounds of detention supplied to the petitioner. There, we find references to two earlier orders of detention against the petitioner. It has been observed that despite the above detention orders, the petitioner has continued with his bootlegging activities.

6. The learned advocate for the petitioner has contended that there is a reference to atleast two earlier orders of detention. The copies of the earlier orders of detention were not supplied to the petitioner. It seems that when representation was submitted, certain copies were not supplied to the detenu and those copies have now been submitted by the learned advocate for the petitioner which are taken on record. Therefore, it is amply clear that the detaining authority has considered

two earlier detention orders passed against the petitioner, copies of which were not supplied to the petitioner. Therefore, the petitioner was not in a position to make an effective representation against his detention.

7. It is not much in dispute that the earlier orders of detention were set aside by this Court. This shows that there was non-application of mind on the part of the detaining authority with respect to the results of the previous two detention orders against the petitioner. In that view of the matter also, the detention order cannot be sustained in the eye of law.

8. It is well settled that to submit an effective representation is a right guaranteed under Article 22(5) of the Constitution of India. In absence of relevant material, a detenu cannot submit an effective representation. In the present case also, the petitioner could not avail of the said valuable right and therefore, the continuous detention of the petitioner cannot be sustained in the eye of law.

9. For the foregoing reason, this petition is allowed. The impugned order of detention dated 24/10/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Dinesh Babubhai Koli, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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